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GREENS CREEK LAND EXCHANGE ACT OF 1995

OCTOBER 19 (legislative day, OCTOBER 18), 1995.—Ordered to be printed

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany H.R. 1266]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 1266) to provide for the exchange of lands within Admiralty Island National Monument, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the Act do pass.

PURPOSE

The purpose of this bill is to provide approval of an agreement between the Forest Service and Kennecott Greens Creek Mining Company (KGCMC) for the exchange of lands within Admiralty Island National Monument in Southeast Alaska.

BACKGROUND AND NEED

H.R. 1266, the “Greens Creek Land Exchange Act of 1995,” provides Congressional approval of an agreement between the Forest Service and KGCMC which provides for an exchange of 7,500 acres of land within the Admiralty Island National Monument. These lands are adjacent to the Greens Creek Mine.

The area surrounding the mine contains an area of mineral potential which remains unexplored because it is currently closed to exploration and development under the Alaska National Interest Lands Conservation Act (ANILCA). This land exchange would permit the operators of the Greens Creek Mine to explore and develop certain lands located within the nonwilderness portion of the monument utilizing the infrastructure associated with the existing mine and under the same stringent regulatory regime currently

governing existing operations. The Greens Creek Mine is an underground mine. Surface activity would be limited primarily to activities such as exploratory drilling and necessary surface access on the areas to be explored.

In exchange for the right to conduct mineral exploration and mining operations on these lands, KGCMC has agreed to participate in a series of conditions which benefit the United States. Specifically, the legislation and agreement will:

1. Establish a land exchange mechanism where KGCMC will purchase \$1 million worth of inholdings among willing sellers within Admiralty Island National Monument, or elsewhere in conservation system units of the Tongass National Forest. KGCMC will convey these lands to the Forest Service. In exchange, at closing, the Forest Service will grant patent to KGCMC for the mineral estate in 7,500 acres of land on Admiralty Island.

2. Require KGCMC to pay a royalty to the U.S. Government on the production of minerals from the exchanged lands only. This royalty is based on the value received from this production after deduction of shipping, smelting, and refining charges. It should be noted that the Greens Creek Mine is located on Admiralty Island, and therefore, shipping costs are significant.

The royalty, referred to in the agreement as a net island receipts royalty, has two tiers based on the value of the ore. When metal prices are average or better, the royalty will be three (3.0) percent, and at low metal prices, the royalty will be three-quarters of one percent (0.75). This two-tier approach will encourage KGCMC to continue operating the mine in times of lower metal prices.

Concerns have been expressed about the auditing process for the royalty formula in the Agreement. It should be noted that the production costs at the Greens Creek mine can be easily audited and are subject to confirmation by federal auditors or independent outside auditors. The Greens Creek Mine is subject to an annual audit by independent auditors under the terms of its partnership agreement.

Costs of production to a large extent are confirmed by third-party billings and invoices. For example: taxes, transportation charges, marketing charges, and similar postmining and processing cost are all subject to confirmation by third-party billings.

Costs of mining and processing are fixed by actual costs expended and subject to confirmation through tax returns, third-party billings, and depreciation schedules controlled by general accepted accounting principles and subject to annual audit by outside auditors. The audit process has already been discussed with the Forest Service which is satisfied that cost of production are readily subject to audit. The Forest Service shares with all joint ventures partners the need to ensure that cost are regularly and accurately audited to ensure financial certainty for investment and production decisions.

3. Establish a special account in the U.S. Treasury, subject to appropriation by Congress, into which \$5 million will be deposited for purchases of additional inholdings within Admiralty National Monument, or elsewhere in conservation system units of the Tongass. The \$5 million will come from future royalties derived from mineral production on the exchanged lands.

4. Send 25 percent of the future royalty stream to the State of Alaska for payments for roads and schools.

5. Require reclamation and reversion to the federal government of all Greens Creek Mine lands (including existing patented federal mining claims) at the cessation of mining activities.

The Greens Creek Land Exchange Agreement and legislation are an innovative approach which allows for limited development of mineral resources while providing for both short and long-term environmental protection of Admiralty Island National Monument. In addition, the agreement establishes a mechanism for the acquisition of inholdings in the Tongass National Forest and, if a valid mineral discovery is found, ensures the federal government will receive royalty revenues on mineral production from the exchanged lands.

LEGISLATIVE HISTORY

On March 16, 1995 the Greens Creek Land Exchange Act of 1995 was introduced by Congressman Don Young, Chairman of Natural Resources Committee and cosponsored by Congressman George Miller, ranking member of the Natural Resources Committee. On May 15, 1995, the House passed the legislation. On September 12, 1995 the Committee on Energy and Natural Resources held a hearing on the legislation.

COMMITTEE RECOMMENDATION AND TABULATION OF VOTES

The Senate Committee on Energy and Natural Resources, in open business session on September 21, 1995, by voice vote of a quorum present, recommends that the Senate pass H.R. 1266 without amendment.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section states that the bill may be cited as the "Greens Creek Land Exchange Act of 1995."

Section 2. Findings

Section 2 makes four findings which state that the Forest Service and KGCMC have negotiated an agreement allowing certain lands surrounding the Greens Creek mine to be explored and developed under terms and conditions consistent with the protection of the values of the Admiralty Island National Monument and that this Agreement requires approval and ratification by the Congress.

Section 3. Definitions

Section 3 defines the following terms used in the Act: Agreement, ANILCA, conservation system unit, Greens Creek Claims, KGCMC, Monument, Royalty and Secretary.

Section 4. Ratification of the agreement

Section 4 ratifies and confirms the Forest Service-KGCMC agreement and provides for future modification or amendment of the agreement, without further action by Congress, upon written con-

sent of all parties and notice in writing to the appropriate committees of Congress.

Section 5. Implementation of the agreement

This section: (a) gives the Secretary of Agriculture the authority to make the land acquisitions provided for in the Act and incorporates these lands into the National Forest System; (b) creates a special account in the U.S. Treasury, the "Greens Creek Land Exchange Account," to receive the first \$5 million of royalties received by the United States and authorizes the expenditures of monies in the special account for acquisition of inholdings on Admiralty Island; (c) makes royalty payments under the Act subject to the 25 percent distribution requirements to the State of Alaska and local governments under provisions of the Act of May 23, 1908; (d) provides that this Act will take precedence over any conflicting provisions in ANILCA with respect to the lands being conveyed to KGCMC for mining purposes; (e) authorizes the Secretary of Agriculture to implement and administer the rights and obligations of the Federal Government under the Agreement; (f) provides for the reclamation of KGCMC surface lands and the administrative deposition of KGCMC lands upon reversion to the United States; and (g) exempts implementation of the agreement in accordance with the Act from the National Environmental Policy Act, the national Historic Preservation Act, title VIII of ANILCA and other laws. This exemption refers to the agreement ratified by the Act and not to any substantive requirement of law regarding the existing mine or the exchanged lands.

Section 6. Recision rights

Section 6 allows KGCMC and Kennecott Corporation to rescind the Agreement within sixty (60) days of enactment of the Act. If the agreement is terminated, the status quo would continue to govern the existing Greens Creek Mine.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of cost of this measure has been provided by the Congressional Budget Office.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 1995.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1266, the Greens Creek Land Exchange Act of 1995, as ordered reported by the Senate Committee on Energy and Natural Resources on September 21, 1995. CBO estimates that enacting H.R. 1266 would not have a significant impact on the federal budget or on the budgets of state or local governments. Because enactment could affect direct spending in the form of royalty receipts, pay-as-you-go procedures would apply. CBO expects that no direct spending effects would occur over the 1996–2000 period.

H.R. 1266 would ratify a land exchange agreement between the Forest Service (FS) and the Kennecott Greens Creek Mining Company (KGCMC). Under the terms of the agreement, KGCMC would acquire the right to explore for and develop minerals found on about 7,5000 acres of federal land in the Tongass National Forest. Under current law, these lands are not available for mineral exploration or development. The federal government would receive a royalty based on the value of any minerals mined on these lands. In exchange for these rights, KGCMC would give the federal government private land in the Tongass National Forest.

The act also would establish a special fund in the United States Treasury into which the first \$5 million of any royalties collected from KGCMC (net of a 25 percent payment to the affected counties) would be deposited. When appropriated, any such funds would be used for additional land acquisition in the area. Based on information provided to us by the FS, we estimate that the provisions of H.R. 1266 and the agreement could be implemented at no significant additional cost to the federal government. But because the agency has no information as to what minerals might be found on the lands to be acquired by KGCMC, on their value, we have no basis for estimating the future royalty income that may result from enacting H.R. 1266. We do not expect any such income to be realized for at least the next five years.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Victoria Heid.

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact of H.R. 1266. The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses. No personal information would be collected in administering the legislation. Therefore, there would be no impact on personal privacy.

EXECUTIVE COMMUNICATIONS

On October 18, 1995 the Committee on Energy and Natural Resources requested legislative reports from the Department of Agriculture and the Office of Management and Budget setting forth executive views on H.R. 1266. These reports had not been received at the time the report on H.R. 1266 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony of the Forest Service which was submitted at the Committee hearing on this measure follows:

STATEMENT OF JACK WARD THOMAS, CHIEF, FOREST
SERVICE, DEPARTMENT OF AGRICULTURE

Mr. Chairman and members of the committee, thank you for the opportunity to discuss H.R. 1266, the Greens Creek Land Exchange Act of 1995. I am accompanied today by Gordon Small, the Director of Lands in the Washington Office, and by Gary Morrison, Forest Supervisor of the Chatham Area of the Tongass National Forest.

Let me thank you, Mr. Chairman, for the opportunity to discuss the provisions of the negotiated agreement and state our support for H.R. 1266 as it passed the House. I also want to complement the managers of Kennecott Greens Creek Mining Company for the years of cooperation we have enjoyed at the operations on Admiralty Island, as well as on the development of this exchange agreement.

H.R. 1266 would ratify a land exchange agreement that the Secretary of Agriculture entered into with Kennecott Greens Creek Mining Company in December of 1994. The agreement evolved from the work of the Congress on the Tongass Timber Reform Act and suggestions from Members that the Forest Service continue to pursue this agreement after enactment of the Act. The agreement was negotiated with Kennecott based on prevailing market practices and will assure protection of environmental values on Federal lands; as well as assuring continuing commodity production, and the associated economic benefits to the local community and Federal taxpayers.

On March 30, 1995, the Administration testified in support of H.R. 1266 with minor amendments. The amendments suggested by the Administration were incorporated through action in the House. We support the bill in its current form based on our December 14, 1994 agreement with Kennecott Greens Creek Mining Company. That agreement provides the right to explore and develop the mineral estate in exchange for the conveyance of lands purchased by Kennecott, a percentage of net island receipts, and other provisions. The lands to be conveyed shall be of at least \$1 million in value. The bill that passed the House would establish a Fund for additional land acquisitions subject to appropriation oversight.

The enactment of H.R. 1266 would allow the exchange of the subsurface rights in light of the withdrawal of the area from dispositions made pursuant to section 503(f)(1) of the Alaska National Interest Lands Conservation Act. Congressional approval is also needed to allow for the collection of the royalty payments and the establishment of the land acquisition fund.

Background

Admiralty Island National Monument, located 12 air miles south of Juneau, contains nearly one million acres of wilderness. Of these acres, only the 18,000 acres contain-

ing the Greens Creek mine is nonwilderness. The island is internationally known for having the most dense population of brown bear in the world; as well as having high populations of bald eagles and other wildlife species. Alaska Native cultural and historical resources are also prominent on the Monument. The Monument is a treasure to be managed with protection of these resources in mind. The proposed legislation would assure the protection of the resources through acquisition of key private inholdings on a willing-seller basis, and well-managed subsurface development of the mineral resources. The elements of this exchange address the interests of the mining industry, conservation groups, the State of Alaska, and the Department of Agriculture.

The mine and mill facilities were completed in February 1989. The facility has been closed for the past two years due to low mineral prices and is currently in the process of re-opening. It is considered to be a model for major resource development within highly sensitive environments. Mine owners have worked closely with the Forest Service throughout the exploration and development of the mine to ensure protection of the resources, especially fish, wildlife, water quality, and the scenic values of the area. Until its temporary closure in 1993, the mine was extracting minerals and milling silver, gold, zinc, and lead. In fact, it was the largest silver producing mine in North America. The mine has shown to be capable of processing over 475 thousand tons of material per year and sustaining over 265 high paying, year-around jobs in the local economy of Southeast Alaska.

The exchange agreement

I would like to address more specifically the details of the exchange agreement. Under terms of the agreement, Kennecott would receive the right to explore the subsurface of 7,500 acres of non-Wilderness, National Forest land within the Admiralty Island National Monument surrounding the company's 17 existing, patented claims (comprising about 350 acres). Should economically extractable minerals be found, Kennecott would then be allowed to mine them, under agreed to environmental protection measures.

In return, Kennecott will acquire (on a willing buyer—willing seller basis) private inholdings of no less than \$1 million in fair market value within Admiralty Island National Monument or other Conservation System Units of the Tongass National Forest. Kennecott would convey the inholding to the Forest Service in exchange for the 7,500 acre mineral estate.

Under the agreement, in addition to the land conveyance, the U.S. Treasury would receive a percentage of the net island returns (royalty) for all minerals mined from the estate conveyed to Kennecott as part of the agreement. The percentage royalty would be based on the prevailing

price of the minerals in the world market. When the market is high, the U.S. Treasury would receive 3% of the net island returns and when the market is low, the U.S. would receive .75% of returns.

This agreement recognizes the principle that the American Taxpayer deserves a return from the use of Federal lands. Compared to current law, which does not provide for a royalty for minerals mined on public domain lands, this agreement is a step in the right direction. However, given the unique characteristics of this land transaction, we do not believe that this particular royalty rate would be appropriate or workable on a broad scale. We defer to the Department of the Interior on the subject of royalties for hardrock minerals mined on Federal lands.

The negotiated agreement limits surface occupancy by Kennecott. Surface occupancy activities would be identified in an approved General Plan of Operation that is subject to the National Environmental Policy Act process. No surface mining, or smelting operations will occur on these lands. Kennecott Greens Creek Mining Company will limit the use of all their private lands within the National Monument to mining and mine related activities. No extralateral rights would extend under the adjacent Wilderness lands.

The agreement establishes that, upon completion of mining (or no later than 100 years following enactment of the bill), the exchanged 7,500 acres, as well as all lands currently owned or yet to be acquired by Kennecott on Admiralty Island, would revert to the United States and be included in the National Monument and the Tongass National Forest after reclamation.

Amendments made during House consideration

At the March hearing before the House Committee on Resources the Administration expressed concerns about budgetary implications of a proposed escrow account in the bill as introduced. The Administration also asked for language clarifying the reclamation responsibilities of Kennecott Greens Creek Mining Company before any lands reverted to the United States. The House amended the legislation to respond to these concerns.

Additionally, the House passed bill includes language that would create a new acquisition fund, subject to appropriation. This provision would make net royalty receipts available for the purchase of additional private inholdings within the National Monument or other conservation system units of the Tongass National Forest. It would also make royalties subject to a 25% payment to the State of Alaska for schools and roads.

The bill in its present form meets all of the Administration's concerns. We want to clarify, however, that the \$5 million acquisition fund is in addition to the conveyance of the real estate valued at \$1 million as provided in the agreement.

Summary

In summary, we feel the economic and environmental benefits are clear:

A long-term, fully operational mine would support at least 250 local jobs for as long as 25 years.

Associated economic benefits would be accrued in both Southeast Alaska and the nation through an expanded tax base.

The Wilderness and National Monument values would be protected through well managed mine development and enhanced through key private inholding acquisition.

The United States would receive conveyance of land worth \$1 million in exchange for the mineral estate. Such lands being within the Admiralty Island National Monument or other conservation system units of the Tongass National Forest.

The 7,500 acres of potentially mineralized subsurface under National Monument, non-Wilderness land, otherwise withdrawn from mineral entry, would be available for full and orderly development of the mine, with minimal surface disturbance.

All Kennecott Greens Creek Mining Company's private lands on Admiralty Island would eventually revert to the United States after reclamation.

A \$5 million land acquisition fund from net royalties received would be created for the purchase of additional private inholdings within the National Monument or other conservation system units of the Tongass National Forest.

The United States would receive royalty payments for minerals mined from the subsurface estate conveyed to Kennecott.

Twenty-five percent of the royalties would be distributed to the State of Alaska for roads and schools prior to deposit in the acquisition fund.

We will continue to work with Kennecott Greens Creek Mining Company and members of your staff, Mr. Chairman, to assure that we can fully implement the provisions of the exchange agreement.

This concludes my statement, Mr. Chairman. Gordon, Gary, or I would be happy to answer any questions you or other members of the committee may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by the Act as reported.